

875—218.104(91D) Department or subdivision.

218.104(1) In order to qualify under 218.1(91D), the employee's managerial duties must be performed with respect to the enterprise in which the employee is employed or a customarily recognized department or subdivision thereof. The phrase "a customarily recognized department or subdivision" is intended to distinguish between a mere collection of persons assigned from time to time to a specific job or series of jobs and a unit with permanent status and function. In order to properly classify an individual as an executive, the employee must be more than merely a supervisor of two or more employees; nor is it sufficient that the employee merely participate in the management of the unit. The employee must be in charge of and have as the primary duty the management of a recognized unit which has a continuing function.

218.104(2) In the vast majority of cases there is no difficulty in determining whether an individual is in charge of a customarily recognized department or subdivision of a department. For example, where an enterprise comprises more than one establishment, the employee in charge of each establishment may be considered in charge of a subdivision of the enterprise.

218.104(3) The unit supervised need not be physically within the employer's establishment and may move from place to place, and that continuity of the same subordinate personnel is not absolutely essential to the existence of a recognized unit with a continuing function, although in the ordinary case a fixed location and continuity of personnel are both helpful in establishing the existence of a unit.

SOURCE: 29 CFR 541.104.